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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Tohono O'odham Utility Authority)	CC Docket No 96-45
)	
Petition for Waiver of Section 54.403 (a))	
of the Commission's Rules)	

**COMMENTS OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION
IN SUPPORT OF TOHONO O'ODHAM UTILITY AUTHORITY'S
PETITION FOR WAIVER**

The National Telephone Cooperative Association ("NTCA") submits these comments in support of the petition filed by the Tohono O'odham Utility Authority (Tohono O'odham) for waiver of Section 54.403(a) of the Commission's rules. Tohono O'odham petitions the FCC to enable Tohono O'odham to receive an additional \$3.50 in federal Lifeline support per Lifeline subscriber by waiving the prerequisite of state commission action.

NTCA is a national association of approximately 500 local exchange carriers that provide service primarily in rural areas. All NTCA members are small carriers that are "rural telephone companies" as defined in the Telecommunications Act of 1996. Tohono O'odham is an NTCA member.

Section 54.403(a) of the Commission's Rules requires state commission action and state matching support before additional federal Lifeline support is made available to carriers. Tohono

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O'odham is subject to the jurisdiction of the governing body of a distinct federally-recognized Indian tribe, not that of a state commission. There are no state matching Lifeline funds available to eligible Tohono O'odham customers. The FCC's rules therefore preclude the consumers living in the territory served by Tohono O'odham the benefit of the additional Lifeline support. Tohono O'odham's request for waiver demonstrates that the reasons advanced by the Commission as justification for Section 54.403(a) do not apply to it and that a waiver is in the public interest.

As emphasized in Tohono O'odham's petition, the federal Lifeline program exists in response to the basic idea that basic telephone rates should be affordable to all residents and access should be provided to low-income consumers in all regions of the nation.¹

Native American communities often exist in the most rural areas and have the highest poverty ratios in the United States. Tohono O'odham estimates that 635 residential households that qualify for Lifeline service do not currently have telephone service.² Current support levels are not sufficient to make basic service affordable to these residents. Under the FCC's rules Tohono O'odham may not receive support which may be made available to other carriers in the state of Arizona. Tohono O'odham residents are therefore paying as much as \$3.50 more per month for basic telephone service than are similarly situated consumers.

Clearly, the FCC in enacting Section 54.403(a) did not intend to create the consequence of denying comparable Lifeline support to those in need and served by tribally owned companies

¹ Tohono O'odham's Petition for Waiver at p. 5.

² Tohono O'odham's Petition for Waiver at fn 11.

or living on tribally owned lands. The FCC has the power to help rectify this inequity.

The Commission has the authority to waive its rules upon a finding that the public interest will be served. The Commission's policy and the Act's mandate of Universal Service will be promoted by this waiver. The Commission is well aware that telephone penetration among Native Americans is abominably low.³ This waiver will serve to remedy this problem for a small number of consumers at a minuscule annual cost to the overall fund.⁴


³ The FCC is holding a series of public hearings to examine telephone service for Indians on reservations because of the "ongoing concern that Indians on reservations, in comparison to other Americans, have less access even to basic telephone service." In holding the hearings, the Commission intends to "determine what specific actions the FCC might take to improve access to telephone service on Indian reservations." *Public Notice*, BO Docket No. 99-11, Released January 21, 1999 and March 2, 1999.

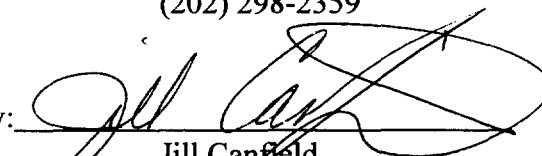
⁴ The annual cost to the fund if the FCC grants this waiver will be just 25 thousand dollars. The entire high cost fund for January 1998 through November 1998 was 421.6 million dollars. *USAC Report on Fund Size Projections*, released January 29, 1999.

NTCA respectfully submits that the FCC should grant the requested waiver to enable the residents of Tohono O'odham to receive the additional \$3.50 in federal Lifeline support.

Respectfully submitted,

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March 4, 1999

CERTIFICATE OF SERVICE

I, Gail C.. Malloy, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in CC Docket No. 96-45, DA 99-259 was served on this 4th day of March 1999 by first-class, U.S. Mail, postage prepaid, to the following persons:


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